

HOUSE BILL 2040

By Shaw

AN ACT to enact the "Tennessee Beverage Container Deposit Act of 2007". This act makes appropriations for litter prevention and recycling for an indefinite period of time.

WHEREAS, the general assembly finds that reducing roadside litter is important for the promotion of tourism and to increase the quality of life for the residents of this state; and

WHEREAS, the general assembly finds that recycling is also an important element of an integrated solid waste management system, which can protect and preserve environmental resources and reduce economic costs to residents and businesses within the state; and

WHEREAS, the general assembly finds a need to reduce both roadside litter and overall litter, as well as a need to expand participation in recycling programs and to minimize costs to those participating in such programs and to government; and

WHEREAS, the purposes of this act are to reduce roadside litter and overall litter, to increase participation and recycling rates for specified deposit beverage containers, and to provide a connection between manufacturing decisions and recycling program management; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known as and may be cited as the "Tennessee Beverage Container Deposit Act of 2007".

SECTION 2. As used in this act, unless the context requires otherwise:

(1) "Centralized processing facility" means an automated, high-volume facility that receives and processes containers collected at satellite drop-off sites, then issues refunds to the customer via cash, check or direct deposit to a designated bank account or charity;

(2) "Commissioner" means the commissioner of environment and conservation;

(3) “Comptroller” means the office of the comptroller;

(4) “Consumer” means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit;

(5) “Dealer” means a person who engages in the sale of beverages in deposit beverage containers to a consumer for off-premises consumption in the state;

(6) “Department” means the department of environment and conservation;

(7) “Deposit beverage” means beer, ale, or other drink produced by fermenting malt; mixed spirits; mixed wine; tea and coffee drinks regardless of dairy-derived product content; soda; or noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human consumption that is contained in a deposit beverage container;

The term “deposit beverage” excludes the following:

(A) A liquid which is:

(i) A syrup;

(ii) In a concentrated form; or

(iii) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;

(B) A liquid which is a drug, medical food, or infant formula as defined by the Federal Food Drug and Cosmetic Act (21 U.S.C., §301 et seq.);

(C) A liquid which is designed and consumed only as a dietary supplement and not as a beverage as defined in the Dietary Supplement Health and Education Act of 1994 (P.L. 103-417);

(D) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;

(E) Products designed to be consumed in a frozen state;

(F) Instant drink powders;

(G) Seafood, meat, or vegetable broths, or soups, but not juices;

(H) Milk and all other dairy-derived products, except tea and coffee drinks containing such products; and

(I) Unmixed wine and liquor;

(8) "Deposit beverage container" means an individual, separate, sealed container made of glass, aluminum, steel, bimetal, or plastic (including polyethylene terephthalate (PET), high-density polyethylene (HDPE) and all other plastic types and grades) in sizes less than or equal to two (2) liters, and used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in this state;

(9) "Deposit beverage distributor" means a person who is a manufacturer of beverages in deposit beverage containers in this state, or who imports and engages in the sale of filled deposit beverage containers to a dealer or consumer. The term includes federal agencies and military distributors, but does not include airlines and shipping companies that merely transport deposit beverage containers;

(10) "Import" means to buy, bring, or accept delivery of deposit beverage containers from an address, supplier, or any entity outside of the state;

(11) "Importer" means any person who buys, brings, or accepts delivery of deposit beverage containers from outside the state for sale or use within the state;

(12) "Mobile redemption center" means a traveling certified redemption center that offers on-site container redemption to residences and/or businesses, either on a one-time or regular basis. Such centers may or may not be associated with a dealer or a permanent (i.e., storefront) redemption center;

(13) "On-premises consumption" means to consume deposit beverages by a consumer immediately and within the area under control of the establishment, including bars, restaurants, passenger ships, and airplanes;

(14) "Person" means an individual, partnership, firm, association, public or private corporation, federal agency, the state or any of its political subdivisions, trust, estate, or any other legal entity;

(15) "Recycling facility" means all contiguous land and structures and other appurtenances, and improvements on the land used for the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of post-consumer material;

(16) "Redeemer" means a person, other than a dealer or distributor, who demands the refund value in exchange for the empty deposit beverage container;

(17) "Redemption center" means an operation that accepts from consumers and provides the refund value for empty deposit beverage containers intended to be recycled and ensures that the empty deposit beverage containers are properly recycled;

(18) "Refillable beverage container" means any deposit beverage container which ordinarily would be returned to the manufacturer to be refilled and resold;

(19) "Reverse vending machine" means a mechanical device that accepts one (1) or more types of empty deposit beverage containers and issues cash, electronic credit or a redeemable credit slip with a value not less than the container's refund value. The refund value payments shall be aggregated and then paid if more than one (1) container is redeemed in a single transaction; and

(20) "Satellite drop-off site" means a designated site where participating consumers bring bags of empty containers for processing at a centralized processing

facility. Such sites shall be capable of scanning the consumer's convenience card and printing out a bar-coded label for each bag.

### SECTION 3.

(a) Beginning on October 1, 2007, every deposit beverage distributor shall pay to the department a deposit beverage container fee on each glass, plastic, aluminum, steel or bimetal deposit beverage container manufactured in or imported into the state. The fee shall be imposed only once on the same beverage container. The fee shall be three cents (3¢) per beverage container.

(b) No county shall impose or collect any assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this act.

### SECTION 4.

(a) By September 1, 2007, all deposit beverage distributors operating within the state shall register with the department, using forms prescribed by the department, and shall notify the department of any change in address or other information previously submitted. After September 1, 2007, any person who desires to conduct business in the state as a deposit beverage distributor shall register with the department no later than one (1) month prior to the commencement of the business.

(b) All deposit beverage distributors shall maintain records reflecting the manufacture of their beverages in deposit beverage containers as well as the importation and exportation of deposit beverage containers. The records shall be made available, upon request, for inspection by the department; provided, that any proprietary information obtained by the department shall be kept confidential and shall not be disclosed to any other person, except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this act or any rule adopted pursuant to this act; or

(2) Under an order issued by a court or administrative agency hearings officer.

## SECTION 5.

(a) There is established in the state treasury the "Deposit Beverage Container Deposit Special Fund", into which shall be deposited:

(1) All revenues generated from the deposit beverage container fee as described under sections 3 and 6 of this act;

(2) All revenues generated from the deposit beverage container deposit as described under sections 6 and 10 of this act; and

(3) All accrued interest from this fund; and

(4) All fines and penalties assessed for violations of this act.

(b) Moneys in the fund shall be used to:

(1) Reimburse refund values;

(2) Pay handling fees to redemption centers;

(3) Pay redemption centers their share of fines collected pursuant to Section 25 of this act;

(4) Fund administrative, audit, and compliance activities associated with collection and payment of the deposits and handling fees of the deposit beverage container fee and deposit program;

(5) Hire personnel to oversee the implementation of the deposit beverage container fee and deposit program, including permitting and enforcement activities; and

(6) Fund associated office expenses.

(c) Pursuant to Section 26 of this act, monies in the fund shall also be used to

(1) Fund the County Litter Grants program administered by the Department of Transportation pursuant to Tennessee Code Annotated, Sections 41-2-123, 57-5-201, and 67-4-402; and

(2) Support other activities as authorized by the general assembly.

(d) The department may also use the money to:

(1) Conduct recycling education and demonstration projects;

(2) Promote recyclable market development activities; and

(3) Support the handling and transportation of the deposit beverage containers to end-markets.

(e) Moneys deposited in the "Deposit Beverage Container Deposit Special Fund" may be expended to fund activities authorized by this act. Any revenues deposited in such fund shall remain in reserve until expended for purposes consistent with this act, and shall not revert to the general fund on any June 30. Any excess revenues from interest earned by such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

#### SECTION 6.

(a) Beginning October 1, 2007, payment of the deposit beverage container fee and deposits as described in Section 10 of this act shall be made monthly based on inventory reports of the deposit beverage distributors. All deposit beverage distributors shall submit to the department documentation in sufficient detail that identifies:

(1) The number of beverages in deposit beverage containers, by container size and type, manufactured in or imported to the state; and

(2) The number of such deposit beverage containers, by container size and type, exported and intended for consumption out of the state during the reporting period.

(b) The amount due from deposit beverage distributors shall be the net number of deposit beverage containers manufactured or imported into the state (the total number of

containers manufactured or imported into the state minus the total number of containers exported for consumption outside the state) multiplied by the sum of the prevailing deposit beverage container fee of three cents (3¢) and the refund value of five cents (5¢). Payment shall be made by check or money order payable to the "Department of Environment and Conservation, State of Tennessee". All inventory reports and payments shall be made no later than the fifteenth day of the month following the end of the payment period of the previous month.

#### SECTION 7.

The program shall be administered by the division of solid waste management within the department of environment and conservation. The commissioner shall create a separate administrative entity within the division of solid waste management, with dedicated positions funded by the deposit beverage container deposit special fund. No existing positions or personnel may be reassigned or reallocated to staff this new entity.

#### SECTION 8.

The comptroller shall conduct a management and financial audit of the program for fiscal years 2007-2008 and 2008-2009, and for each fiscal year thereafter ending in an even-numbered year. The comptroller shall submit the audit report, including the amount of unredeemed refund value and recommendations, to the general assembly and the department no later than twenty (20) days prior to the convening of the next regular session. The costs incurred by the comptroller for the audit shall be reimbursed by the deposit beverage container program special fund. The comptroller may contract the audit services of a third party to conduct the audit.

#### SECTION 9.

The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the



provisions of Tennessee Code Annotated, Title 4, Chapter 5. Full implementation of the deposit beverage container deposit program shall commence no later than January 1, 2009.

#### SECTION 10.

(a) By January 1, 2009, every deposit beverage container sold in this state shall have a refund value of five cents (5¢). Each container shall have the refund value clearly indicated on it as provided in Section 12 of this act. In addition, each container shall encode the refund information within its UPC bar code. This information shall be readable by reverse vending machines and other electronic scanning equipment.

(b) The refund value is the amount of the deposit required. Once a refund value has been applied to a deposit beverage container, the deposit on that container may not be changed, but shall be paid to the state.

(c) The deposit on each filled deposit beverage container shall be paid by the deposit beverage distributor who manufactured or imported the beverage in such deposit beverage container. Payment and reporting of the deposits shall be in accordance with Section 6 of this act. The deposits shall be deposited into the deposit beverage container deposit special fund as described in Section 5 of this act.

(d) Deposit beverage distributors who are required under subsection (c) to pay a deposit shall also pay a deposit beverage container fee and register with the state.

#### SECTION 11.

(a) Beginning January 1, 2009, every deposit beverage distributor who pays a deposit shall charge the dealer or consumer a deposit equal to the refund value for each deposit beverage container sold in Tennessee. The deposit charge may appear as a separate line item on the invoice.

(b) Each dealer shall charge the consumer the deposit beverage container deposit at the point of sale of the beverage excluding sales for on-premises consumption. The deposit charge may appear as a separate line item on the invoice.

#### SECTION 12.

(a) Except as provided in subsection (b), every deposit beverage container sold in this state shall clearly indicate the refund value of the container and the word "Tennessee" or the letters "TN". The names or letters representing the names of other states with comparable deposit legislation may also be included in the indication of refund value. Other indications may be required as specified in rules.

(b) Subsection (a) does not apply to any type of refillable glass beverage container which has a brand name permanently marked on it and which has the equivalent of a refund value of at least five cents (5¢) which is paid upon receipt of such container by a dealer or distributor.

#### SECTION 13.

(a) All dealers, regardless of the square footage of the dealer's place of business, shall post a clear and conspicuous sign at each public entrance to the dealer's place of business, which specifies the name, address, and hours of operation of the closest redemption center locations.

(b) If there is no redemption center within a two-mile radius of a dealer, and the dealer is located in a high-density population area as defined by the commissioner by rule, then the department, in consultation with the affected county, shall determine the need for a redemption center in that area. If a redemption center is deemed necessary, then the department, in cooperation with the affected county, shall establish the redemption center with funding from the deposit beverage container deposit special fund.

#### SECTION 14.

(a) Prior to operation, redemption centers shall be certified by the department.

(b) Applications for certification as a redemption center shall be filed with the department on forms prescribed by the department.

(c) Municipal, metropolitan, and county governments, nonprofit agencies, and dealers are eligible to apply for certification to operate an independent redemption center.

(d) The department shall consult with the respective counties to determine the number of independent redemption centers needed to adequately serve each county, based on population density, distribution, number of retailers and other factors. The department shall use these findings to determine the optimum number of certifications that may be issued for each county.

(e) The department, at any time, may review the certification of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center, the department, after it has afforded the redemption center operator a hearing in accordance with Tennessee Code Annotated, Title 4, Chapter 5, may withdraw the certification of the center if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(f) Redemption centers, including mobile redemption centers, shall:

(1) Accept all types of empty deposit beverage containers for which a deposit has been paid;

(2) Verify that all containers to be redeemed bear a valid Tennessee refund value;

(3) Pay to the redeemer the full refund value for all beverage containers, except as provided in Section 16 of this act;

(4) Ensure each container collected is recycled through a contractual agreement with an out-of-state recycler or an in-state recycling facility permitted by the department;

provided, that this subdivision shall not apply if the redemption center is operated by a recycler permitted by the department; and

(5) Forward the documentation necessary to support claims for payment as stated in Section 18 of this act.

(g) Redemption centers' redemption areas shall be maintained in full compliance with applicable laws and with the orders and rules of the department, including permitting requirements.

#### SECTION 15.

Reverse vending machines may be used by redemption centers to satisfy the requirements of Section 13 of this act; provided, that the reverse vending machines shall accept any type of empty deposit beverage container and pay out appropriate refunds via cash, electronic credit, or a redeemable voucher for those containers that bear a valid Tennessee refund value. If the reverse vending machines are unable to read the Tennessee refund value, then the department shall specify a delayed date in which the reverse vending machines may be used. Redemption centers using reverse vending machines shall ensure that such reverse vending machines are routinely serviced to ensure proper operation and continuous acceptance of containers and payment of refunds.

#### SECTION 16.

Redemption centers shall refuse to pay the refund value on any broken, corroded, dismembered, flattened deposit beverage container, or any deposit beverage container which:

- (1) Contains a free flowing liquid;
- (2) Does not properly indicate a refund value; or
- (3) Contains a significant amount of foreign material.

#### SECTION 17.

(a) The department shall pay to each certified redemption center a handling fee of not less than the prevailing beverage container fee for each deposit beverage container redeemed by a consumer which is transported out-of-state or received by an approved in-state company for an approved end use for recycling or received by a department-permitted recycling facility.

(b) The handling fee shall be paid in addition to the refund value of each such empty beverage container. The department may choose to pay the handling fee and refund value on the basis of the total weight of the containers received by material type and the average weight of each container type.

(c) The state shall pay redemption centers for handling fees and refund values within ten (10) business days after receipt of invoice.

(d) A handling fee and refund value may only be paid once for each container redeemed by a consumer and claimed by a redemption center in accordance with Section 1 of this act.

#### SECTION 18.

(a) The department shall pay certified redemption centers handling fees and refund values as described in Section 17 of this act, based on collection reports submitted by the redemption centers. All redemption centers shall submit to the department information on forms prescribed by the department. Information shall include at a minimum:

(1) The amount and type of containers accepted and rejected;

(2) The amount of refunds paid out;

(3) The amount and weight of each type of container transported out of state, or to a permitted recycling facility; and

(4) Copies of transport and weight receipts from recycling facilities. If the redemption center and the recycling facility are the same entity, receipts shall be independently verified. Such documentation shall be used for periodic, random audits of redemption centers.

(b) The requests for payment by the redemption center shall be no more frequent than two (2) times per month.

#### SECTION 19.

Recycling facilities, in addition to any other requirements under this act or any other provision of law, shall prepare or maintain the documents involving empty beverage containers, as required by the department.

#### SECTION 20.

The records of the deposit beverage distributor, redemption center, and recycling facility shall be made available, upon request, for inspection by the department, a duly authorized agent of the department, or the auditor. Any proprietary information obtained by them shall be kept confidential and shall not be disclosed to any other person, except:

- (1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this act or any rule adopted pursuant to this act; or
- (2) Under an order issued by a court or administrative agency hearings officer.

#### SECTION 21.

The department shall convene an advisory committee to assist it in developing any rules needed to implement this act. The department shall select members of the committee so as to obtain input on the state level, as well as assess the impact on each individual county, consumers, recyclers, and the beverage industry. Members of the committee shall be appointed by the commissioner and shall serve at the commissioner's pleasure. A simple majority of the committee members shall constitute a quorum for the purposes of recommending rules and providing input to the commissioner.

#### SECTION 22.

Except as provided otherwise in Section 25, any person who violates any provision of this act or any rule adopted pursuant to this act shall be fined not more than ten thousand

dollars (\$10,000) for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be made through administrative, civil, or criminal actions.

#### SECTION 23.

(a) If the commissioner determines that any person has violated or is violating any provision of this act, any rule adopted pursuant to this act, or any term or condition of a certification or permit issued pursuant to this act, the commissioner may do any one (1) or more of the following:

(1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;

(2) Issue an order assessing an administrative penalty for any past or current violation;

(3) Require compliance immediately or within a specified time; and

(4) Commence a civil action in circuit court in the county in which the violation occurred or where the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a certification or permit issued pursuant to this act and shall state with reasonable specificity the nature of the violation.

(c) Any order issued under this act shall become final, unless not later than twenty (20) days after the notice of order is served, the person or persons named therein request in writing a hearing before the commissioner. Any penalty imposed pursuant to this act shall become due and payable twenty (20) days after the notice of penalty is served, unless the person or persons named therein request in writing a hearing before the commissioner. Whenever a hearing is

requested on any penalty imposed pursuant to this act, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the commissioner shall require that the alleged violator or violators appear before the commissioner for a hearing at a time and place specified in the notice and answer the charges complained of.

(d) Any hearing conducted pursuant to this section shall be conducted as a contested case. If after a hearing held pursuant to this section, the commissioner finds that a violation or violations have occurred, the commissioner shall:

(1) Affirm or modify any penalties imposed or shall modify or affirm the order previously issued; or

(2) Issue an appropriate order or orders for the prevention, abatement, or control of the violation involved, or for the taking of such other corrective action as may be appropriate.

If, after a hearing on an order or penalty contained in a notice, the commissioner finds that no violation has occurred or is occurring, the commissioner shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation.

(e) If the amount of any penalty is not paid to the department within thirty (30) days after it becomes due and payable, the commissioner may institute a civil action in the name of the state to collect the administrative penalty that shall be a government realization. In any proceeding to collect the administrative penalty imposed, the commissioner need only show that:

(1) Notice was given;



(2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;

(3) The administrative penalty was imposed; and

(4) The penalty remains unpaid.

(f) In connection with any hearing held pursuant to this section, the commissioner shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

SECTION 24. The department shall provide quarterly reports on the deposit beverage container program to the general assembly and the governor for the period beginning October 1, 2007, and ending December 31, 2009. The reports shall contain, but not be limited to:

(1) Performance indicators;

(2) Measures of effectiveness, including impacts on litter, measured by volume;

(3) Organization charts; and

(4) Position descriptions of every type of position created and actual salaries paid to each employee.

The reports shall include recommended legislation for statutory changes.

SECTION 25. The obligations to accept or take empty beverage containers and to pay the refund value and handling fees for such containers as described in this act apply only to containers originally sold in this state as filled beverage containers. A person who, during any single transaction, tenders to a dealer, distributor, redemption center, or bottler more than twenty-four (24) empty beverage containers that the person knows or has reason to know were not originally sold in this state as filled beverage containers is subject to the enforcement action and civil penalties set forth in this section. At each location where customers tender containers for redemption, dealers and redemption centers must conspicuously display a sign in letters that are at least one inch (1") in height with the following information:

*WARNING: Persons tendering containers for redemption that were not originally purchased in this state may be subject to a fine of the greater of one hundred dollars (\$100) per container or twenty-five thousand dollars (\$25,000) for each tender.*

A person who violates the provisions of this section is subject to a civil penalty of the greater of one hundred dollars (\$100) for each container or twenty-five thousand dollars (\$25,000) for each tender of containers. Each fine collected pursuant to this provision shall be placed in the "Deposit Beverage Container Deposit Special Fund" and disposed of as follows: fifty percent (50%) of the fine shall remain in the fund to be expended for activities authorized by this act, and fifty percent (50%) of the fine shall be returned to the redemption center at which the violation was committed as an incentive to watch for and report fraudulent redemptions.

SECTION 26. At the end of each fiscal year, any refund moneys that remain unclaimed in the fund created pursuant to Section 5 of this act shall escheat to the state, shall not revert to the general fund, and shall be allocated annually as follows:

(1) Ten million dollars (\$10,000,000) shall be allocated to the Department of Transportation, to be used exclusively for the continued funding of the existing County Litter Grants program provided for in Tennessee Code Annotated, Sections 41-2-123, 57-5-201, and 67-4-402.

(2) The remaining funds shall be appropriated by the general assembly, with preference given to funding recycling education and demonstration projects, promoting recycling market development activities, and supporting the handling and transportation of beverage containers to end-markets.

SECTION 27. This act shall take effect July 25, 2007, the public welfare requiring it.